

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
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| Petition of AT&T Inc. for Conditional |) | |
| Forbearance under 47 U.S.C. Section 160 |) | WC Docket No. 07-215 |
| with Regard to the Commission's |) | |
| Pay-Per-Call Services Rules |) | |
| |) | |
| TO: The Commission |) | |
| |) | |

OPPOSITION OF INFONXX, INC.

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SUMMARY

AT&T, Inc. seeks forbearance to offer a pay-per-call service that it calls “enhanced directory assistance” through the abbreviated dial code of *288. Because grant of the Petition would harm consumers, stifle competition, result in higher prices and less innovation, and is contrary to established Commission and industry policy, InfoNXX, Inc., the leading independent provider of directory assistance (DA), opposes grant of the Petition as contrary to the public interest.

AT&T’s Petition is contrary to long-standing numbering policy. It asks the Commission permission to offer an enhanced DA service through a vertical service code (VSC). But these abbreviated dial codes are used for “vertical” services such as call forwarding and automatic call return, and should not be used to give a competitive advantage to a pay-per-call service.

AT&T’s proposal is an end run around both the North American Numbering Plan Administration (NANPA) process for assigning VSCs and the Commission’s rules and previous decisions which establish dialing parity for enhanced directory assistance. Therefore, the Commission should reject AT&T’s request as inconsistent with Commission precedent on numbering resources.

AT&T’s Petition also fails because it does not satisfy the requirements for forbearance under Section 10 of the Communications Act of 1934. Enforcement of the Commission’s regulations is necessary to ensure that AT&T’s charges and practices are just, reasonable, and nondiscriminatory, and is also necessary for the protection of consumers because it would cause severe consumer confusion to enable just one pay-per-call information service on a VSC.

The wireline DA market is still dominated today by incumbent local exchange carriers, who control the traditional DA access numbers of 411 and 555-1212. The lack of dialing parity due to the use of these default codes is the major obstacle to a competitive DA market, and

AT&T will further raise this barrier by using *288 to access their enhanced DA service. While AT&T claims that several competing alternatives to its proposed *288 service would be available, the “alternatives” it describes are not comparable. Indeed, the only true alternatives to AT&T’s service would be the services offered by other enhanced DA providers, and these other enhanced DA providers, such as InfoNXX, would face an uphill battle in competing if AT&T *alone* had an abbreviated dialing string to offer its customers.

The only way the Commission could consider AT&T’s Petition meritorious would be to extend to other DA service providers the ability to use a *3XXX number that would compete with a *3XXX number that AT&T would use. This would mitigate the anticompetitive effect of granting AT&T the ability to use a VSC for accessing its enhanced DA service. However, InfoNXX is not aware that NANPA has the resources to meet the anticipated demand for VSCs, and the better step is for the Commission to reject the forbearance petition outright.

This analysis of AT&T’s forbearance petition underscores the need for regulatory action to bring increased competition to the DA services market, both basic and enhanced. InfoNXX believes the far better approach to a competitive DA market for both basic and enhanced would be to eliminate the 411 and 555-1212 default DA codes and require all DA providers to use new 555-XXXX numbers. Therefore, InfoNXX urges the Commission to reject AT&T’s Petition and, instead, turn its attention to the open proceeding examining its current rules and regulations with respect to DA services.

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WC Docket No. 07-215

TO: The Commission)
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OPPOSITION OF INFONXX, INC.

AT&T seeks forbearance to offer through the abbreviated dialing code of *288 a pay-per-call service that it calls "enhanced directory assistance," which would provide a range of information from news to sports to movie listings and would include basic directory assistance (DA). By virtue of its hold of 411, AT&T today has a monopoly on basic directory assistance (name, number and billing address). With this Petition of AT&T, Inc. for Conditional Forbearance from Enforcing 47 U.S.C. Section 228(b)(5) and 47 C.F.R. Section 64.1506 ("Petition"), AT&T seeks to extend its monopoly hold to a new offering, "enhanced directory assistance," which competitors cannot match, and thereby make an end run of not just the North American Numbering Plan Administration (NANPA) process, but Commission rules.¹ Because grant of the Petition would harm consumers, stifle competition, result in higher prices and less innovation, and is contrary to established Commission and industry policy, InfoNXX, Inc., the

¹ Petition of AT&T, Inc. for Conditional Forbearance from Enforcing 47 U.S.C. § 228(b)(5) and 47 C.F.R. § 64.1506, WC Docket No. 07-215 (September 11, 2007) ("Petition of AT&T").

leading independent provider of directory assistance, opposes grant of the Petition as contrary to the public interest.

I. AT&T'S REQUEST IS CONTRARY TO COMMISSION PRECEDENT THAT ABBREVIATED DIAL CODES SHOULD NOT BE USED, AS AT&T SEEKS TO DO, TO DISTORT COMPETITION.

The AT&T Petition bristles with the sound of a new idea,² but this debate is actually an old one: should one party be able to use the truly scarce resource of abbreviated dial strings to engage in a new line of business?

Abbreviated dialing strings are telephone numbers of less than the standard 7 or 10 digits.³ In 1992, Cox Communications proposed that an abbreviated dialing string of 211 be assigned in the Atlanta area to the *Atlanta Journal Constitution* for use as an information platform that could be a resource for news, entertainment, sports scores and financial information—just what AT&T is proposing in 2007.⁴ BellSouth responded in 1992 with its own request that 211 be allocated to it, and the result was the launch of a Commission review of abbreviated dial strings.⁵ In its *First Report & Order*, the Commission studied the issue and rightly concluded that because only a very limited number of abbreviated codes will be available

² This “enhanced directory assistance” would include “local, national and reverse DA, business category searches, and information pertaining to business and finance, entertainment, movies, news, sports, weather, local events, traffic conditions, and stocks.” Petition of AT&T, at 3.

³ *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd. 5572, 5574 (1997) (“*N11 First Report and Order*”).

⁴ Comments of Cox Enterprises, Inc., CC Docket No. 92-105 (June 5, 1992). This was another front in the then-legendary battles between the telephone companies and the newspaper industry over Bell entry into “information services.”

⁵ See *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Notice of Proposed Rulemaking, 7 FCC Rcd. 3004, 3004 (1992) (“*First N11 Notice of Proposed Rulemaking*”).

in any given geographic area, “demand for each N11 code is likely to exceed supply.”⁶ The Commission went on to observe:

[A]lthough an N11 number for information services may be considered “novel,” and might be convenient for some users, it is by no means essential to making the service available. Second, even assuming that consumers do perceive a benefit from such abbreviated dialing arrangements, we find there are other ways currently available to achieve convenient dialing that do not drain scarce N11 resources. In New York, for example, information services are assigned a common central office prefix such as 540 or 970. As consumers associate these prefixes with information services, they need remember only the last four digits of an information service provider's telephone number. Such dialing arrangements appear to offer the same results as N11 *without the competitive concern of having to decide to whom the codes should be assigned.*⁷

If one changes “N11” to “*2XX” in the text of that decision, it is clear that the Commission already has addressed the question raised in this Petition. With no more than ninety-nine *2XX codes available, clearly demand for each *2XX code is likely to exceed supply. In short, the competitive concerns that led the Commission to deny use of this scarce abbreviated dial string to be used by one company apply with equal force to the vertical service code (VSC) at issue in the AT&T Petition.

AT&T’s proposal is all the more galling because it seeks to take a vertical service code, heretofore used for “vertical” services such as call forwarding and automatic call return, and arrogate to itself the use of this valuable dial string to offer an information service.⁸ Because

⁶ *N11 First Report and Order*, at 5583.

⁷ *Id.* at 5584–85 (citations omitted) (emphasis added).

⁸ The Commission has explained that “[v]ertical service codes (VSCs) are codes that use a leading star. They are numbering resources maintained and administered by the North American Numbering Plan Administrator (NANPA). . . . Services that rely on VSCs include call (continued...)

under NANPA rules, VSCs only can be assigned to carriers, the vast majority of information companies in the United States could not compete with AT&T because they could not get access to a *2XX dial string. AT&T once again seeks to use its control over a valuable dial string to harm competition.⁹ The Commission rightly rejected a bid by a single company in 1992 to use abbreviated dials string to harm competition, and the Commission should follow that precedent in analyzing this Petition and reject it as well.

In addition to being directly contrary to Commission precedent on numbering policy, AT&T's forbearance petition also fails because it does not satisfy the requirements for forbearance under Section 10. Enforcement of the Commission's regulations is necessary to ensure that AT&T's charges and practices are just, reasonable, and nondiscriminatory, and to protect consumers. Furthermore, a grant of forbearance in this case would be patently inconsistent with the public interest due to its effect of stifling rather than promoting competition in the market for DA services.

If the North American Numbering Administrator could assure the Commission that similar *2XX or *3XXX dial strings were available, and there were enough to meet the

forwarding, which is activated by dialing *72 or 1172, automatic callback, and customer-originated trace." *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Notice of Proposed Rulemaking, 19 FCC Rcd. 9173, 9178–79 (2004) ("Second *N11 Notice of Proposed Rulemaking*"). To date, the only VSCs recognized by the industry are *XX or *2XX dialing strings. And as noted by the Commission, the kinds of services offered through VSCs are usually services such as call forwarding, automatic callback, and customer originated trace. Second *N11 Notice of Proposed Rulemaking*, 19 FCC Rcd. at 9178–79. Curiously, it does not appear from publicly available information that AT&T has requested that NANPA assign *288 to AT&T.

⁹ AT&T presumably will use this same dial string on its wireless business, thus giving it complete control and blocking out all competitors.

anticipated demand, then the analysis perhaps would be different. But we are not aware that NANPA has the resources to meet the demand or that a shift to the use of VSCs for competitive offerings could be readily implemented. Thus, InfoNXX believes that the better step is for the Commission to promptly reject this ill-considered forbearance petition and instead turn its attention to the open proceeding examining its current rules and regulations with respect to DA services.¹⁰ In that proceeding, InfoNXX has followed the Commission's suggestion from the *N11 First Report & Order* and proposed that all parties provide directory assistance, both basic and enhanced, using the same dial string platform.¹¹

II. ENFORCEMENT OF THE COMMISSION'S REGULATIONS IS NECESSARY TO ENSURE THAT THE CHARGES AND PRACTICES OF AT&T ARE JUST AND REASONABLE AND NOT UNJUSTLY OR UNREASONABLY DISCRIMINATORY

Section 228(b)(5) of the Communications Act directs the Commission to adopt rules that require providers of "pay-per-call services" to offer such services through the use of designated telephone number prefixes and area codes. To implement the law, the Commission adopted Section 64.1506 of its Rules, which requires that all interstate pay-per-call services be offered through telephone numbers beginning with a 900 area code. AT&T seeks conditional forbearance from Section 228(b)(5) and Section 64.1506 on the grounds that it satisfies the statutory three-part test. Yet analysis of the current market and what AT&T seeks to offer shows that AT&T has failed to meet its burden on each prong.

¹⁰ See *Provision of Directory Listing Information Under the Communications Act of 1934, as Amended*, CC Docket No. 99-273.

¹¹ See *id.*

The statutory test for forbearance under Section 10 has three prongs that must all be satisfied before the Commission is obligated to forbear from enforcing a regulation. The first requirement is that the Commission's rule is not necessary to ensure that the charges, practices, classifications, or regulations by the carrier are just and reasonable and are not unjustly or unreasonably discriminatory.¹²

In this case, Commission regulation is necessary to prevent AT&T from charging unjust, unreasonable, and discriminatory rates. Today, the market for basic DA services is not competitive—DA service rates are extraordinarily high and going higher. But basic DA is limited to billing name, address and telephone number. AT&T proposes to create a one-firm market for enhanced DA using an abbreviated dial string. That would be a monopoly offering to AT&T's customers, and consequently customers need the protection of Section 64.1506.

A. The DA Market—Basic and Enhanced—Needs Competition.

Since the passage of the 1996 Act, prices for most—but not all—telecommunications services have declined, fulfilling much of the promise that Congress saw in the legislation. While rates for business and residential toll service have declined, in the retail directory assistance market, prices have climbed to nearly \$2 in many parts of the country.¹³ The wireline directory assistance market is still dominated today by incumbent local exchange carriers (ILECs), who control the traditional DA access numbers of 411 and 555-1212, and as a result, retail DA is one of the few telecommunications services actually going *up* in price. For example, in Texas a DA call cost \$.30 in 1991, nearly quadrupled in price to \$1.10 in 2001, and today is

¹² Communications Act of 1934 § 10(a).

¹³ Letter from Gerard Waldron, Counsel for InfoNXX, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273 (Sep. 25, 2006).

\$1.99.¹⁴ Those charges border on the outrageous given that the cost of providing a DA call is \$0.25 to \$0.27.¹⁵ Even for the Bell system, a 700% *mark-up* is eye catching.

There is clearly a need for competitive DA services in this country, but the service offered by AT&T will not advance that goal but instead cement the monopoly position of the largest ILEC. Competing directory assistance providers are poised to offer a broad array of enhanced information and telecommunications services (including call completion) to consumers. However, these competitive DA providers, such as InfoNXX, cannot offer a competing service with the same dial string of 411, and now AT&T proposes to extend its monopoly to enhanced DA using *2XX.

B. The Lack Of Dialing Parity Is The Major Obstacle To A Competitive DA Market, And AT&T Will Raise This Barrier By Using *2XX For Enhanced DA.

As noted above, wireline directory assistance market is still dominated today by ILECs, who control the traditional DA access numbers of 411 and 555-1212. Companies who wish to enter the market with longer, less recognizable dial strings do not provide an effective substitute; thus, some services, such as AT&T's 00-INFO and MCI's 10-10-9000, have tried to meet the need for enhanced directory services but have failed to succeed due to the dialing disparity of competing against the 411 monopoly.¹⁶ More recently, providers such as Metro One, with it's

¹⁴ See AT&T Directory Information - Texas, <http://www.att.com/gen/general?pid=1437> .

¹⁵ See Samar Srivastava, *Mobile Search Is Dialing Up Voice Recognition*, Wall Street Journal, May 31, 2007, at B1.

¹⁶ See Kathleen A. Pierz, Competition 61-62 (2003); AT&T Comments, at 10, CC Docket No. 99-273 (Apr. 1, 2002); *see also* Letter from Gerard Waldron, Counsel for InfoNXX, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273 (June 6, 2003); WorldCom Reply Comments, at 9, CC Docket No. 99-273 (Apr. 30, 2002); Telegate Reply Comments, at 8-9, CC Docket No. 99-273 (Apr. 30, 2002). Telegate, one of the most successful competitive DA providers in Europe, has effectively left the U.S. market because the market is not open to competition. (continued...)

Infone enhanced DA service, have tried to enter the market with a 10-digit code, but they too have failed.¹⁷ This track record shows that dialing parity remains critically important to consumers and that enabling AT&T to offer enhanced DA using an abbreviated dial string would harm consumers by stifling competition.

The Commission time and again has concluded based on its experience in other telephone markets that robust competition only comes through dialing parity.¹⁸ The Commission's own studies reveal that consumers are much more likely to use a three-digit access code than a seven-digit number. In N11 trials conducted in various localities the Commission found that "intelligent transportation systems are substantially more likely to succeed when they are accessible via an N11 code."¹⁹ In a three-month trial in Kentucky and Ohio, Kentucky residents dialed 211 to reach the traveler information service and Ohio residents dialed 333-3333 to reach

President & CFO of Telegate Inc. sees significant chance in wireless side of US directory assistance market, Wall Street Transcript, <http://www.twst.com/notes/articles/lws049.html> (Nov. 28, 2002).

¹⁷ Metro One reported that, after an extensive and well-financed advertising campaign featuring celebrity endorsements from the likes of former Governor and wrestler Jesse Ventura and others, it had just 70,000 users of its Infone service. Press Release, Metro One Reports 2004 First Quarter Financial Results (Apr. 23, 2004). Not surprisingly, it shut down the service quickly thereafter. By comparison, the ILECs will process *three to four billion* wireline DA calls this year without spending one penny in retail DA advertising.

¹⁸ As early as 1969, the FCC declared the long distance market open to competition. But a competitive *retail* long distance market did not develop until the mid-1980s, when the FCC instituted 1+ dialing parity for all long distance providers. See *MTS and WATS Market Structure Policies and Requirements, Phase III*, Report and Order, 100 FCC 2d 860 (1985) ("*WATS Order*"). The European experience with retail DA competition also confirms the importance of dialing parity. See Pierz, *supra* note 16, at 11-59; Telegate Comments, at 4-18, CC Docket No. 99-273 (Apr. 1, 2002).

¹⁹ *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, Third Report and Order and Order on Reconsideration, 15 FCC Rcd. 16,753, 16,761 (2000) ("*N11 Third Report and Order*").

the same traveler information.²⁰ Not surprisingly, nearly 3/4 more calls (72%) were made to 211 than to 333-3333.²¹

In its *N11 First Report and Order*, the Commission specifically recognized the competitive advantage that ILECs would be given if they alone were able to use N11 codes for their enhanced services offerings. On that basis, the Commission adopted this requirement:

*[A] LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services. LECs offering enhanced services through the use of an N11 code are subject to rules designed to protect against discrimination and possibly other anticompetitive conduct.*²²

Interesting question: How have the carriers responded to this requirement of mandatory sharing of the abbreviated dial string if they offer enhanced DA? They have chosen not to offer enhanced DA. They obviously have reasoned that it is better to collect 700% profit on a product that gives consumers little information than to have to actually compete and innovate.

The nondiscriminatory requirement adopted in the *N11 First Report and Order* highlights the end run that AT&T is trying to pull. AT&T's Petition is a blatant attempt to circumvent that decision by using a vertical service code for accessing enhanced DA. Because they cannot offer enhanced DA without facing competition on 411, they've decided to take their marbles to vertical service codes, where AT&T believes it can play alone.

²⁰ *Id.*

²¹ *Id.*

²² *N11 First Report and Order*, 12 FCC Rcd. at 5601 (emphasis added).

* * *

It bears mention that the experience of the U.S. with DA is unique in the Western world. Many European countries have already taken steps to promote competition in their retail directory assistance markets, and those markets are vibrant with competition and with innovation. The experiences of these countries show that a critical condition for the success of retail competition is genuine numbering parity.²³ Those countries that have retained the incumbent's preferential short code—or even adopted competitive codes whose format is based on suffixes added to the incumbent's code—have found competition floundering.²⁴ Other markets, such as France, Switzerland, Germany, the U.K., and Ireland, have created robust competition by ensuring that all providers have genuine dialing parity.²⁵ Countries that have instituted genuine dialing parity have been rewarded with greater options and higher service quality for their citizens.²⁶

Permitting AT&T to use an abbreviated dialing sequence for reaching their enhanced DA service would be a step backwards in the pursuit of a competitive retail DA market. It would exacerbate the dialing parity problem that has plagued the basic DA market and led so many companies to fail, and it would eviscerate the pro-competitive position the Commission adopted in its *N11 First Report and Order*, which sought to establish a dialing parity regime for enhanced

²³ See Pierz, *supra* note 16, at 11-59; Letter from Gerard Waldron, Counsel for InfoNXX, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273 (June 18, 2003); Telegate Reply Comments, *supra* note 16, at 5-8; Telegate Comments, *supra* note 18, at 6-18.

²⁴ See Pierz, *supra* note 16, at 11-59; Letter from Gerard Waldron, Counsel for InfoNXX, *supra* note 23; Telegate Comments, *supra* note 18, at 6-18.

²⁵ See Pierz, *supra* note 16; Letter from Gerard Waldron, Counsel for InfoNXX, *supra* note 23.

²⁶ See Pierz, *supra* note 16.

DA. By pulling this end run, AT&T could then raise its enhanced DA rates to unreasonable, unjust, and discriminatory prices. Thus, the requirements of the first prong of Section 10 have not been met, and the Commission should deny AT&T's petition.

III. THE ENFORCEMENT OF THE REGULATIONS AT ISSUE IS NECESSARY FOR THE PROTECTION OF CONSUMERS

The second prong of Section 10 requires that enforcement of the regulation or provision at issue is not necessary for the protection of consumers.²⁷ AT&T argues that the second prong of Section 10 is satisfied because there is no risk of consumers mistaking its enhanced DA service, which would be a pay-per-call service, for a free service.²⁸

It is true that traditional vertical services have a price associated with them, and AT&T grabs onto that to justify the use of VSCs for an information hotline. But this claim is absurd. The services being offered today are in every sense adjunct to the basic telephone service because they either trigger some switching function related to your telephone service or give you information (such as Caller ID) related to your phone service. AT&T tries to bootstrap the fact that these services have a fee into justifying the use of a VSC to offer sports scores and stock tips. AT&T thus seeks to pervert this numbering resource to its own use to launch a new information business, a use that would give it yet another advantage in the directory assistance market.

Because consumers have never been exposed to information services on a vertical service code, and have been used to accessing those pay-per-call information services on 900 numbers, it

²⁷ Communications Act of 1934 § 10(a).

²⁸ See Petition of AT&T, at 6-9.

would cause severe consumer confusion to enable just one pay-per-call information service on a vertical service code. If there were lots of offerings on *2XX or *3XXX then the circumstances might be different, but until that day arrives consumers need the benefit of the consumer protection of pricing preambles that Congress found so vital.

IV. FORBEARANCE FOR AT&T WOULD NOT BE IN THE PUBLIC INTEREST BECAUSE IT WOULD STIFLE COMPETITION IN THE DA MARKET

The third prong of Section 10's test for forbearance requires that any grant of forbearance be consistent with the public interest.²⁹ In determining under the third prong whether forbearance is consistent with the public interest, the Commission must consider whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."³⁰

As the Commission has noted before, the 1996 Telecommunications Act established a "procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced communications and information technologies and services to all Americans by opening all telecommunications markets to competition."³¹ Thus, the very purpose of the Act was to serve the public interest by allowing for increased competition in the telecommunications marketplace.

AT&T argues in its Petition that there would be many alternatives to its enhanced DA service available to consumers, and it identifies traditional DA services, phone books, online

²⁹ Communications Act of 1934 § 10(a).

³⁰ *Id.* § 10(b).

³¹ *Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended*, First Report and Order, 16 FCC Rcd 2736, 2739 (2001) (quoting S. Rep. No. 104-230, at 1 (1996) (Conf. Rep.)).

versions of yellow and white pages, other websites providing DA services, and other existing enhanced DA services as competitors.³² These “alternatives” are, in fact, not comparable, and the truth remains that only AT&T can offer its customers DA through an abbreviated code.

As noted above, basic DA services only include name, address and telephone number. Yes, AT&T could choose to offer enhanced DA using 411, but that means it would have to compete, and plainly AT&T has no interest in competition. So it is sophistry to suggest that basic DA will be a source of meaningful competition. Equally unavailing is the claim that phone books, online versions of yellow and white pages, and other websites providing DA services are effective substitutes for its enhanced DA offering. (The claim of phonebooks as a substitute is especially ironic, given that last month AT&T announced that it was halting distribution of phone books in some markets as a sign of the future.³³) These services are not an effective substitute for many reasons. Lots of Americans lack access to a computer for online services. Also, these services do not offer live-operator assistance, which is essential for category searches, variable spelling searches,³⁴ and assistance in emergency situations. Most importantly, these other directories (whether published or online) are stale and dated. By Commission decision, Internet databases use the same once-a-year list that is given to book publishers.³⁵ As a consequence,

³² Petition of AT&T, at 10.

³³ Herb Kirchoff, *AT&T Proposes Dumping White Pages in North Carolina Test*, Comm. Daily, Oct. 12, 2007.

³⁴ Letter from Gerard Waldron, Counsel for InfoNXX, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273 (June 14, 2004).

³⁵ See Pierz, *supra* note 16, at 62 (free online databases are nine to 24 months outdated and cannot perform complex searches); WorldCom Reply Comments, *supra* note 16, at 6; see also *Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended*, First Report and Order, 16 FCC Rcd. 2736, 2754–57 (2001).

online databases are as stale as the book in your closet. There is a reason why consumers billions of times a year call 411 and pay for information: because they value high quality and updated information from live operators.

Beyond DA information, other providers of information such as news and sports scores would face an uphill battle if AT&T alone were granted the right to use an abbreviated dialing sequence, since all other providers would have to use either 7-digit or 10-digit dialing numbers. As explained above, dialing parity is necessary for the creation of a competitive market place where all DA service providers compete based on the merits of their service.

V. THE COMMISSION SHOULD GRANT AT&T'S PETITION ONLY IF OTHER ENHANCED DA PROVIDERS CAN UTILIZE A *3XXX NUMBER

On the basis of existing numbering policy, and on the basis of the analysis under Section 10, the Commission should promptly deny AT&T's Petition. The only way the Commission could consider AT&T's Petition meritorious would be to extend to other DA service providers the ability to use a *3XXX number that would compete with a *3XXX number that AT&T would use.³⁶ This would help mitigate the anticompetitive effect of AT&T *alone* being able to offer its enhanced DA services through an abbreviated number.

This Petition should prompt the Commission to consult with NANPA on the fact that VSCs are a limited resource and are assigned according to the guidelines developed by the ATIS-sponsored Industry Numbering Committee, which is affiliated with NANPA.³⁷ Currently,

³⁶ Perhaps the Commission could do so by treating AT&T's petition as one on behalf of a class of DA service providers.

³⁷ See *Vertical Service Code Assignment Guidelines*, Alliance for Telecommunications Industry Solutions, Industry Numbering Committee (2000), available at <http://www.atis.org/inc/docs.asp>.

only telecommunications carriers are eligible for VSCs, and yet that would close off the country's leading information companies—such as Dow Jones/News Corp., Time Warner, The Washington Post Company, and many others, including InfoNXX—from entering this business. The Commission therefore should explore with NANPA the ability of non-carrier information service providers to get access to VSCs.

* * *

This analysis of AT&T's forbearance petition—which demonstrates that AT&T should not be granted a special exception from the Commission's current rules—underscores the need for regulatory action to bring increased competition to the DA services market, both basic and enhanced. InfoNXX believes the far better approach to a competitive DA market for both basic and enhanced would be to eliminate the 411 and 555-1212 default DA codes and require all DA providers to use new 555-XXXX numbers. Interestingly, a company that is now part of AT&T claimed a few years ago that elimination of these default codes would confuse and frustrate consumers who have grown accustomed to using these numbers.³⁸ We are glad that AT&T has changed its position because in the instant Petition it argues that any potential concerns about consumer confusion can easily be addressed through consumer education efforts.³⁹ We agree. By moving to genuine dialing parity, a competitive DA environment will be established and

³⁸ Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, BellSouth Corporation, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273, at 10 (June 3, 2004); *see also* Letter from Anne D. Berkowitz, Associate Director, Federal Regulatory Advocacy, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 99-273, at 5 (March 4, 2005).

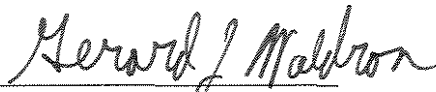
³⁹ Petition of AT&T, at 4.

consumers will finally have the benefit of being able to evaluate and choose DA providers based on price, innovation, and quality of service available.⁴⁰

CONCLUSION

For the reasons stated herein, the Commission should deny AT&T's Petition.

Respectfully submitted,



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⁴⁰ See consolidated dockets: *Provision of Directory Listing Information Under the Communications Act of 1934, as Amended*, CC Docket No. 99-273; *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket No. 92-105; *Administration of the North American Numbering Plan*, CC Docket No. 92-237.